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BOOK REVIEWS.

A HISTORY OF FRENCH PRIVATE LAW. By Jean Brissaud, Late Professor of History in the University of Toulouse. Translated from the Second French Edition by Rapelje Howell, of the New York Bar. With Introductions by W. S. Holdsworth, Reader in English Law, St. John's College, Oxford, and John H. Wigmore, Professor of Law, Northwestern University. Boston: Little, Brown, and Company, 1912. pp. xlviii, 922.

The legal profession is to be congratulated that men of the great erudition of Dean Wigmore and the editors associated with him are devoting themselves so unselfishly to the heavy labor of presenting in fitting English form the masterpieces of continental legal literature. Though much may be said about the insufficiency of translations as a basis of scholarly work in any subject, the fact remains that the great bulk of the legal profession, even those of a scholarly habit of mind, have not the linguistic ability necessary to use the original sources of knowledge. On the other hand the need of knowledge of European law is a most insistent one. Our continual round of precedent-grinding, on the basis of the naive political philosophy of the eighteenth century, has long since proved its inadequacy. The profession, or at least the better part of it, is beginning to look for some enlarging and enfranchising ideas, and is ready to welcome them from any source. Though much remains to be done in the detail of working out the history of our own system, we nevertheless have a solid basis of historical knowledge of the common law, thanks to the investigations of our scholars, English and American, in that field. The careful study of cases and the building up of our admirable series of case-books have made the results of these historical investigations available to the student of our day. The next step forward must be to enlarge the basis of our scholarship by comparative study of other systems in their historical development and to get new points of view as to the meaning and tendency of legal concepts from the legal philosophies of other countries. The translation will give to the average member of the profession and to the ordinary student of law a chance to participate in or at least to keep up with the progress in the comparative and philosophic fields, and will serve the same purpose in this new movement that the case-books have served in interpreting and passing on the historical knowledge of our own system.

The first part of Brissaud's "*Manuel d'histoire du droit français*," on sources, has been translated and published in the first volume of "The Continental Legal History Series" (Cf. review in 11 MICH. LAW REVIEW 342.) The present volume contains an introductory chapter on primitive law taken from the volume on public law, followed by a translation of Part III on Private Law. This rearrangement of the original text has been somewhat criticised, but as this introductory part gives an account of the origin of the family, of ownership, and of the state, it seems almost necessary to a proper

understanding of the contents of the third volume of the original, which begins with an account of the nature of ownership and of real rights. The succeeding chapters on the institutions of private law deal with obligations, with intestate succession and gratuitous conveyances, with the system of property between spouses, and with the status and capacity of persons. The first two parts of the original treat the subject chronologically, the third part deals with the several institutions topically. Whatever may be said in general about the relative advantages of the vertical and the horizontal schemes of presentation of the history of institutions, or of some combination of the two, no one, after a careful perusal of this volume as presented in its English form, can fail to acknowledge that the result attained in the present work is most satisfying.

The most striking characteristic of the work is the breadth and accuracy of the author's learning. He has drawn on English, German, Italian and mediaeval sources, to substantiate or illustrate his conclusions in French law, to such an extent that the result seems a history of continental legal principles rather than simply a history of the law of France.

The author knows that even in America legal principles have been developed that are of cosmopolitan interest and value. For example, his account of the experiment in state-building on the basis of a community holding of land by the colonists of Nantucket Island in 1671, where certain dissenters fleeing from the persecutions of the Puritans of Massachusetts established a polity very similar to that of the Germanic tribes as described by Tacitus (Cf. p. 42). He notes also that the American homestead as established in Texas in 1839 recalls the ancient condition of the dwelling-house and the enclosure connected with it. (cf. p. 53, not.) He seems to know not only English legal sources but also literary sources that have legal coloring, as in his reference to the English system of imprisonment for debt described by Dickens (cf. p. 567). All his statements are buttressed up by complete references to the original authorities so that the notes form a complete bibliography of the comparative law of continental Europe.

With this abundance of material in comparative law it is to be regretted that there is not a fuller treatment of "cause," the concept at the basis of French contract, in its relation to the analogous concept of consideration in English law. These two peculiar institutions got into English and French law at about the same time, apparently, and in their developed form they seem almost identical. It would be interesting to know whether there is any historical connection between them. We would gladly have also a fuller treatment of the *pactum a percussione palmarum* (cited on p. 495 and referred to on p. 502, p. 576 and elsewhere) with a more complete explanation of the "Handsschlag" as the legal essence of this old formal contract. But these are regrets, not criticisms, and we certainly should be more than satisfied with the great wealth of knowledge poured out in the book.

The translation is very good and the form of presentation with its black type headings of paragraphs will facilitate the use of the work as a classroom text. If the index were expanded to include all the institutions referred

to in the notes it would greatly increase the value of the book for reference by making the great mass of literature referred to in the notes more readily accessible.

J. H. D.

THE LAW OF QUASI CONTRACTS. By Frederick Campbell Woodward, Professor of Law in Leland Stanford Junior University. Little, Brown, & Co., Boston, 1913. pp. lxi, 498.

A nonsensical fairy story, the title of which has escaped us, depicts a Butter Scotch man who couldn't run till he got warm and couldn't get warm till he ran. Not unlike the plight of this candy gentleman is that of the law of Quasi Contracts. The decisions in this field are to an extraordinary extent unreasoned, the courts finding no generalizations satisfactory or otherwise, upon which to rest; and when reasoned they are to an extraordinary extent reasoned in a way that it is difficult to accept. As a result of which a scientific text treatment of the subject is an almost superhuman task. On the other hand the want of text treatment of the subject is sufficient excuse to merely human judges for the unsatisfactory character of their decisions.

In this state of things we should welcome every decision and every text that ventures to generalize upon this branch of the law. It is in this spirit that we have revered Mr. Keener as the pioneer in this field, a pioneer whom for twenty years no one has been hardy enough to follow. In this same spirit we welcome most cordially the treatise that Mr. Woodward now gives us and we applaud the author for genuine constructive work of an order that the common hack writer of law texts in his philosophy has never dreamt of. We do not mean to suggest that the author has thrown away the reports and attempted to evolve the law from his inner consciousness but that he has gone beyond a mere digest of decisions and has analyzed, criticized and arranged the cases in the way that guides us to their intelligent use.

We disagree with Mr. Woodward in many particulars and can by no means accept his book as the last word on this subject, but it would be presumptuous to attempt within the scope of this review to expose what we consider his errors and we are entirely willing to rest in praise of his work. Without qualification we recommend it to the profession as by far the most satisfactory text yet given to us on the law of Quasi Contracts.

E. N. D.

PURE FOOD AND DRUG MANUAL, by Charles Wesley Dunn, A.M., of the New York Bar. Dunn's Pure Food and Drug Legal Manual Corporation, 32 Liberty Street, New York, N. Y., pp. xxvi, 2347.

With the passage of the Pure Food and Drugs law in 1906, there has been an increased interest shown in this line of work. It has necessitated the training of a great many chemists to fill positions with the government, states and corporations, a demand far from being satisfied at the present time. Some attorneys, too, in the larger cities have found it advisable to specialize in this new branch of the law. Its importance is very apparent when one looks